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U.S. PATENT & TRADEMARK OFFICE

TO:	REPORT ON THE
Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court TRENTON on the following ☑ Patents or ☐ Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
07-4017	8/22/2007	TRENTON

PLAINTIFF	DEFENDANT
MEDPOINTE HEALTHCARE INC.	COBALT PHARMACEUTICALS INC.

	PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1	5,164,194		SEE ATTACHED COMPLAINT
2			
3			
4			
5			

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY ☐ Amendment ☐ Answer ☐ Cross Bill ☐ Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
WILLIAM T. WALSH, CLERK		8/22/2007

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

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ATTORNEYS FOR PLAINTIFF
MEDPOINTE HEALTHCARE INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MEDPOINTE HEALTHCARE INC., Plaintiff, vs. COBALT PHARMACEUTICALS INC., Defendant.	Civil Action No. 07-4017 (JAP)

COMPLAINT

Plaintiff MedPointe Healthcare Inc., for its Complaint against Defendant Cobalt Pharmaceuticals Inc., hereby alleges as follows:

Parties

1.A. Plaintiff MedPointe Healthcare Inc. ("MedPointe") is a Delaware corporation having a place of business at 265 Davidson Avenue, Somerset, New Jersey 08873.

1.B. Upon information and belief, Defendant Cobalt Pharmaceuticals Inc. ("Cobalt") is a corporation organized and existing under the laws of Canada, having a place of

business at 6500 Kitimat Road, Mississauga, Ontario, Canada L5N 2B8. Upon information and belief, Defendant Cobalt manufactures numerous generic drugs for sale and use throughout the United States, including in this judicial district.

Nature of the Action

2. This is a civil action for the infringement of United States Patent No. 5,164,194 ("the '194 patent"). This action is based upon the Patent Laws of the United States, 35 U.S.C. §100 *et seq.*

Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Cobalt by virtue of, *inter alia*, (1) the fact that Cobalt has committed, or aided, abetted, contributed to and/or participated in the commission of, a tortious act of patent infringement that has led to foreseeable harm and injury to Plaintiff MedPointe in New Jersey; (2) its systematic and continuous contacts with New Jersey, including through its agent, Cobalt Laboratories, Inc., which is registered to do business in New Jersey and registered as a Drug or Medical Device Manufacturer or Wholesaler with the New Jersey Department of Health and Senior Services; and (3) its admission that this Court has personal jurisdiction over it in *Teva Pharmaceutical Industries Ltd. and Teva Pharmaceuticals USA, Inc. v. Cobalt Pharmaceuticals, Inc. and Cobalt Laboratories, Inc.*, 2:07-CV-1690 (WHW) (D.N.J.), in which Cobalt stated in its June 27, 2007 Answer to Plaintiffs' First Amended Complaint, and Related Counterclaims that "Cobalt admits that this Court has personal jurisdiction over Cobalt Pharmaceuticals, Inc."

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c) and/or (d) and 1400(b).

The Patent

6. On November 17, 1992, the '194 patent, titled "Azelastine Containing Medicaments," was duly and legally issued to Asta Pharma AG as assignee. Since August 16, 2002, MedPointe has been, and continues to be, the sole owner of the '194 patent and the sole owner of the right to sue and to recover for any infringement of that patent. A copy of the '194 patent is attached hereto as Exhibit A.

Acts Giving Rise to this Action

7. Upon information and belief, on or after November 14, 2005, Cobalt submitted ANDA 78-847 to the FDA under § 505(j) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 355(j)).

8. ANDA 78-847 seeks the FDA approval necessary to engage in the commercial manufacture, use, offer for sale and sale of a generic azelastine hydrochloride nasal spray product, 0.125 mg (base)/spray, for use in treating, *inter alia*, seasonal allergic rhinitis ("the Generic Product"). ANDA 78-847 specifically seeks FDA approval to market the Generic Product prior to the expiration of the '194 patent.

9. ANDA 78-847 alleges under § 505(j)(2)(A)(vii)(IV) of the Federal Food, Drug and Cosmetic Act that the claims of the '194 patent are either invalid, unenforceable and/or not infringed by the manufacture, use or sale of the Generic Product. MedPointe received written notification of ANDA 78-847 and its § 505(j)(2)(A)(vii)(IV) allegation on July 10, 2007.

10. Cobalt's submission of ANDA 78-847 to the FDA, including the § 505(j)(2)(A)(vii)(IV) allegation, constitutes infringement of the '194 patent under 35 U.S.C.

§ 271(e)(2)(A). Moreover, if Cobalt commercially makes, uses, offers to sell or sells the Generic Product within the United States, or imports the Generic Product into the United States, or induces or contributes to any such conduct during the term of the '194 patent, it would further infringe the '194 patent under 35 U.S.C. § 271 (a), (b) and/or (c).

11. Cobalt had actual and constructive notice of the '194 patent prior to filing ANDA 78-847.

12. MedPointe will be irreparably harmed by Cobalt's infringing activities unless those activities are enjoined by this Court. MedPointe does not have an adequate remedy at law. Both the balance of the hardships as between MedPointe and Cobalt and the public interest further support this Court enjoining Cobalt's infringing activities.

Prayer for Relief

WHEREFORE, MedPointe prays for judgment as follows:

A. That Cobalt has infringed the '194 patent;

B. That, pursuant to 35 U.S.C. § 271(e)(4)(A), the effective date of any approval of ANDA 78-847 under § 505(j) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 355(j)) shall not be earlier than the expiration date of the '194 patent, including any extensions;

C. That Cobalt, its officers, agents, servants and employees, and those persons in active concert or participation with any of them, are preliminarily and permanently enjoined from making, using, offering to sell or selling the Generic Product within the United States, or importing the Generic Product into the United States, prior to the expiration of the '194 patent, including any extensions;

States, or importing the Generic Product into the United States, prior to the expiration of the '194 patent, including any extensions;

D. That MedPointe be awarded monetary relief if Cobalt commercially makes, uses, offers to sell or sells the Generic Product within the United States, or imports the Generic Product into the United States, prior to the expiration of the '194 patent, including any extensions, and that any such monetary relief be awarded to MedPointe with prejudgment interest;

E. That MedPointe be awarded the attorney fees, costs and expenses that it incurs prosecuting this action under 35 U.S.C. § 285; and

F. That MedPointe be awarded such other and further relief as this Court deems just and proper.

Dated: August 22, 2007

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